

FEB 24 2009

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Date of Facsimile: 2-24-09

By:


Michelle Whittington

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **LEE**Atty. Docket No: **IT-03-006**Appln. No.: **10/696,148**Group Art Unit: **2151**Filed: **10/29/2003**Examiner: **WALSH, JOHN B.**Title: **ENDPOINT STATUS NOTIFICATION SYSTEM**

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

(in response to Non-Entry of Reply Brief)

Dear Sir:

Appellant timely filed a Reply Brief in response to the October 3, 2008 Examiner's Answer on December 3, 2008. On January 15, 2009, the Examiner refused entry of the Reply Brief on the grounds that the Brief included new evidence. Specifically, Appellant submitted three dictionary definitions for the Board's consideration of the ordinary terms "call control" and "call." This Reply Brief redacts the reference to the dictionaries and resubmits the Reply Brief. Appellant submits that there is sufficient showing of cause for delay in filing this Reply Brief because the delay is *only* due to the Non-Entry Notice received from the Office.

Any fee due for filing of this Reply Brief may be withdrawn from Applicant's Deposit Account **502721**.

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Status of Claims:

Claims 1-18 have at one time, been pending in the present application. Claims 3 and 10 were cancelled. Thus, claims 1, 2, 4-9 and 11-18 remain pending and stand finally rejected and are on appeal. The Claims **Appendix A** attached to Appellant's Appeal Brief contain a copy of the claims subject to this appeal.

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Grounds of Rejection to be reviewed on Appeal:

The only issue for consideration on this Appeal is:

- (A) Whether Applicant's claims are anticipated by the Mullaly reference (US Patent No. 6,553,341) under 35 USC §102(a).

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Arguments:

All arguments and legal standards recited in Appellant's Appeal Brief are to be maintained and the following are supplemental.

On page 10 of the Examiner's Answer, the Examiner states "the structure of Mullaly's send mail button performs the same function as appellant's "call-control option" since it initiates a "telephony-related function" since the email would use telephony infrastructure for communicating." This statement is the crux of the Examiner's arguments in favor of maintaining the Section 102 rejections to Appellant's claims. It is Appellant's belief that the Examiner is not fully appreciating the definition of "call-control option" as it is generally understood in the telecommunications industry and defined in Applicant's specification. Accordingly, this Reply Brief will provide sufficient evidence to the Examiner and the Board that a "call-control option" is not akin to "sending mail" because it does not and cannot perform the same function. Should the Board find that the Examiner's reasoning is flawed and in fact contradicts the plain meaning of the term "call-control option" then the Board will have no option but to overturn the rejections of record and allow the application to issue.

Legal Standard**MPEP 2111****Claim Interpretation; Broadest Reasonable Interpretation**

During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." >The Federal Circuit's *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard:

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The PTO determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004). Indeed, the rules of the PTO require the application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1).

The PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification.

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

MPEP 2111.01Plain Meaning

The ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, 75 USPQ2d 1321 (Fed. Cir. 2005). *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir.

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2003); *Brookhill-Wilk I, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003) ("In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art.").

In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.); *ACTV, Inc. v. The Walt Disney Company*, 346 F.3d 1082, 1092, 68 USPQ2d 1516, 1524 (Fed. Cir. 2003).

Argument

The Office is required to interpret claim language consistent with the meaning ascertainable by the specification. Additionally, the Office's interpretation must be consistent with the interpretation that those skilled in the art would reach. Finally, absence an express intent by the Applicant, the claim interpretation is presumed to take on the ordinary and customary meaning attributed by those of ordinary skill in the art, and such meaning may be gleaned from reference sources.

Accordingly, the Office must interpret the term "call-control option" consistent with any meaning ascertainable by the specification, by those of ordinary skill in the art, and by an appropriate meaning from a reference source.

As is commonly known, "call control" is the term used by the telephone industry to describe the setting up, monitoring and tearing down of telephone calls. A person or a

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computer can accomplish the task via a desktop telephone or a computer attached to that telephone, or the computer attached to the desktop phone line.

Also, as is commonly known in the telecommunications industry, with respect to telephony, call control refers to the software within a telephone switch that supplies its central function. Call control decodes addressing information and routes telephone calls from one end point to another. It also creates the features that can be used to adapt standard switch operation to the needs of users. Common examples of such features are "Call Waiting", "Call Forward on Busy", and "Do Not Disturb".

Finally, it is generally understood that a "call" is the attempted connection to establish a voice communication between two people, also known as a "phone call."

Referring to Applicant's specification, "the call control commands provide the user a means to immediately perform a call function related to the received status notification. For instance, if the status notification stated, "Jeff's status has changed to Available," then the user may have the option to call Jeff immediately by selecting the "Call" option on the notification." [Par. 0064]. "The user receives a status notification such as the popup alert of Figure 5A due to Sheila's reportable event. In addition, the popup alert may include a call control function related to the event. The current embodiment includes a "Call" hotspot that when activated immediately places a call from the user to Sheila Brown's extension or number...The user is further provided with call handling options only pertinent to the call to Sheila, such as hangup, leave a message, and leave a voicemail." [Par. 0048]. "In the last example, the call control commands provided include "Listen to message" such as a voice message, and "Respond to message," such as return the call to Bill." [Par. 0053].

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It is clear from Applicant's specification that "*call-control option*" is intended to be defined in accordance with a call, such as a telephone call. Applicant's specification is devoid of any suggestion that "*call-control option*" is intended to be extended to "mail", "email" or any other means of communication that would fall under the scope of "send mail." Further, it is clear from the above reference sources that "*call-control*" is defined with respect to telephone calls and does not extend to "mail" or "email." The plain meaning of the term "*call-control*" clearly indicates it refers to a phone call (hence "call-control"). Applicant's intended meaning of the term "*call-control*" is consistent with the any interpretation of those of ordinary skill in the art as evidenced by the definitions directly from telecommunication references. Accordingly, the Board must interpret the term "*call-control option*" to encompass only a "call" and must disagree with the Examiner's flawed interpretation that "send mail" performs the same function as "*call-control option*".

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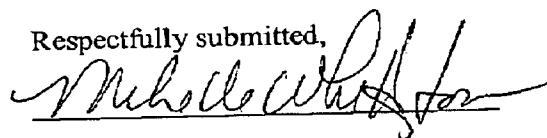
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CONCLUSIONS

For the reasons stated in Appellant's Appeal Brief and as stated above, it is respectfully submitted that all of the pending claims are patentable over the cited prior art and the Board is respectfully requested to overturn the rejections of record and allow this application to issue.

The Commissioner is hereby authorized to charge any additional fees and credit any overpayment associated with this Appeal to Inter-Tel Deposit Account No. 502721.

Respectfully submitted,



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Registration No. 43,844
Inter-Tel (Delaware), Inc.

Date: February 24, 2009